L E G A L M E M O R A N D U M

DATE: October 25, 1994

TO: Jerry George, Director, Point Foundation

FROM: Albert Barsocchini, Attorney At Law

RE: Proposed agreements between Point and Legacy, Inc.

CONFIDENTIAL

SCOPE OF ASSIGNMENT

On or about October 14, 1994, I was contacted by Jerry George who identified himself as one of the directors of the Point Foundation (referred to herein as "Point"). I was asked to give a pro bono legal opinion for Point on a set of proposed agreements between the Point Foundation and Legacy Media, Inc. (referred to herein as "Legacy"). The agreements were formally presented to the board by Gaetano Kazuo Maida on or about October 14, 1994. I was further told by Jerry George that to his knowledge all of the contract negotiations between Point and Legacy were handled by Mr. Maida. The documents also reveal that Mr. Maida is a "part owner" of Legacy.

DOCUMENTS REVIEWED

This legal memorandum was based solely upon the following documents:
Bylaws of Point dated 11/19/71 (Exhibit A)
Motion Picture Rights Agreement dated 8/ 24/93 (Exhibit B)
Letter to John Sumser from Mr. Maida dated 6/6/94 (Exhibit C)
Frankfurt, Garbus, Klein & Selz retainer and fee agreement dated 6/21/94 (Exhibit D)
Frankfurt, Garbus, Klein & Selz conflict disclosure letter dated 6/23/94 (Exhibit E)
Frankfurt, Garbus, Klein & Selz legal bill dated 8/10/94 (Exhibit F)
Memo to the board from Tano dated 10/14/93 (Exhibit G)
Electronic Rights Agent Agreement that is undated and unsigned. (Exhibit H)
Motion Picture Rights Agreement that is undated and unsigned. (Exhibit I)
Assignment Of Rights that is undated and unsigned. (Exhibit J)
Draft letter to Point from Legacy (Exhibit K)
Declaration of Jerry George (Exhibit l)

FACTS:

The Point Foundation is a nonprofit public benefit corporation that was formed in 1971 (Exhibit A). There are currently four directors: Jerry George, Gaetano Kazuo Maida, Peggy Lauer, and Beau Takahara.

On or about August 24, 1993, Mr. Maida from Legacy Media, Inc. entered into a film rights agreement with John Sumser from Point (Exhibit B). The agreement gave Legacy exclusive worldwide film rights for the Millennium Whole Earth Catalog. The only condition was that Legacy had to both commence filming and obtain a commitment for funding within six months of the date the contract was signed. In a memo dated October 14, 1994, Mr. Maida represented to the board that Legacy commenced filming within six months (Exhibit G). However, there is no evidence as of this date that the financing condition has in fact been satisfied.

On or about November, 1993, Mr. Maida became a director for Point (Declaration Of Jerry George).

On June 6, 1994, Mr. Maida wrote to John Sumser, Executive Director of Point, confirming a conversation in which it was orally agreed that Legacy would be the exclusive agent for Point with regard to the electronic rights to the Catalog (Exhibit C). No details of the oral agreement were given in that letter and there is no other independent confirmation in writing or otherwise, that there was any oral agreement.

On or about June 21, 1994, Mr. Sumser retained the law firm of Frankfurt, Garbus, Klein & Selz to represent both Point and Legacy in the regard to formalizing certain rights in the Millennium Whole Earth Catalog and Point's trademarks. The letter from the law firm fully disclosed the possibility of conflicts between the interests of both parties. A legal bill dated August 10, 1994 (Exhibit F) indicates that that the law firm not only prepared the trademark application, but also drafted an electronic rights agreement, motion picture rights agreement, an assignment of motion picture rights, and a letter for Legacy regarding bundling of the rights. Point paid the entire legal bill.

On or about October 14, 1994, Mr. Maida formally presented to the board of directors the proposed subject agreements. The memo accompanying the documents requested that the board act quickly and approve them (Exhibit G).

INTERESTED DIRECTORS

California Corporate Code Section 5230 et seq. sets forth the duties and liabilities of directors of public benefit corporations. Directors must follow specific and strict procedures in approving transactions involving a nonprofit corporation and a director who has a *material financial interest in the transaction.* If such transactions are not approved by the California Attorney General or a disinterested board upon showing of certain facts pursuant to Corp. C. 5233(d)(2), the transaction will be deemed a *self-dealing transaction* and may subject the directors to monetary and equitable damages.

An *interested director* is defined as one who has a *material financial interest* in a transaction with the corporation CC 5233(a). Mr. Maida is both a director of Point and a part owner and controller of Legacy as stated in the conflict clause of Exhibits H and I.

Mr. Maida also signed the waiver of conflict letter (Exhibit E) as an officer of Legacy. The proposed motion picture agreement and assignment give Legacy valuable exclusive film, television and video rights. The exclusive agency agreement gives Legacy 15% of all gross profits from all electronic rights sold. Furthermore, it is my understanding after discussions with Jerry George, that Mr. Maida will be the producer for the film about the Catalog.

Based on my review of the documents, there is evidence that Mr. Maida has a *material financial interest* in the subject transactions between Legacy and Point; and therefore, is an *interested director.*

SELF-DEALING DIRECTORS

A *self-dealing transaction* is a corporate transaction involving an *interested director* which does not meet the requirements of Corporate Code 5233(d). To meet the requirements of that section, the transaction must be either: approved by the Court or Attorney General (Corp. C. 5233(D)(1)); or have prior or subsequent approval by the directors upon showing of certain facts (Corp. C. 5233(D) (2 and 3).

Since the board has not sought the prior approval of the Attorney general in regard to the subject transactions, we must look to Corp. C. 5233(D)(2) for guidance. That code section requires the board to make a determination that: (1) the corporation acted for its own benefit; (2) the transaction was fair and reasonable to the corporation at the time; (3) the corporation in fact could not have obtained a more advantageous arrangement with reasonable effort under the circumstances, or the board determined in good faith after reasonable investigation that the corporation could not do so, and (4) the board authorized the transaction in good faith by a majority of directors then in office (excluding the votes of interested directors with knowledge of the material facts and the directors interest.

The proposed motion picture rights agreement and assignment gives Legacy *all* television, motion picture and video rights to the Whole Earth Catalog in perpetuity. In consideration for giving up those valuable rights, Point gets *2.5% of all net revenues.* The board must now determine in good faith after a reasonable investigation whether or not Point could have obtained a more advantageous arrangement with another party? Based on the declaration of Jerry George, the board has not fulfilled the requirements of Corp. C. 5233(D)(2).

The exclusive agency agreement appoints Legacy for 3 years as the sole and exclusive agent for Point in regard to all electronic rights. Furthermore, Point agrees to reimburse Legacy for all approved expenses and Legacy gets *15% of the gross profits.* Again, the board must now determine in goof faith after reasonable investigation whether or not Point could have obtained a more advantageous arrangement with another party? Based on the declaration of Jerry George, the board has also not fulfilled the requirements of Corp. C. 5233(D)(2).

Additionally, there is no evidence that the board fulfilled the requirements of Corp. C. 5233(D)(2) in regard to the alleged oral exclusive agency agreement between Mr. Maida and John Sumser (exhibit C). The board should immediately investigate this issue and determine what exactly was said between Mr. Maida and Mr. Sumser.

DAMAGES

Failure of the board to meet the above strict requirements of the California Corporate Code could expose all members to liability. If a self-dealing transaction has taken place, the interested director or directors shall do such things and pay such damages as in the discretion of the court will provide an equitable and fair remedy to Point, taking into consideration any benefits received by Point and whether the interested director(s) acted in good faith and with the intent to further the best interests of Point (Corp. C. 5233(H)). The court may award prejudgement interest to the extent allowed by C.C. 3287 or 3288 and may grant exemplary damages "for a fraudulent or malicious violation of " Corp. C. 5233 (Corp. C. 5233(h)).

STANDING AND TIME FOR BRINGING ACTION

An action to remedy a self-dealing transaction may be brought in the Superior court by the corporation, a director, an officer, or the Attorney General (Corp. C. 5710).

An action by the Attorney General must be brought within 10 years after the transaction occurs. An action by another party must be brought within 3 years after the transaction occurred (Corp. C. 5233(e).

WAIVER OF CONFLICT

The law firm of Frankfurt, Garbus, Klein & Selz was retained by Point to represent both Point and Legacy after it specifically advised Point of possible conflicts. The proposed agreements also contains a waiver of conflicts. It is my considered opinion that the board of directors of Point should never have allowed the law firm to represent *both* parties to the transaction or allowed Mr. Maida to negotiate on behalf of Point when he was also representing Legacy.

If a conflict does arise between Point and Legacy, Inc., the law firm will be unable represent the interests of Point which would force Point to retain independent counsel and spend additional attorney fees.

Furthermore, the specific waiver of conflict in the agreements (Exhibits H & I) states that "The parties further acknowledge that there is no conflict of interest based on the fact that Gaetano Kazuo Maida is a Director of Point and may receive financial benefits from the rights granted hereunder to Legacy, which is partly owned and controlled by him".

Jerry George stated in his declaration that Mr. Maida represented to the board that the law Firm was retained primarily to handle the trademark matter. The use of the law firm for any other purpose including the drafting of the proposed agreements between Legacy and Point is improper without authorization from the board. Point should be immediately reimbursed by the responsible party for any attorney fees that were not authorized by the board.

CONCLUSION

Based on my review, it is recommended that:

1. The board postpone ratifying the agreements between Legacy and Point until it has fulfilled in good faith and after reasonable investigation Corp. C. 5233(D)(2), or sought the prior approval of the Attorney General of California;

2. The board should immediately investigate what exactly was orally agreed, if anything, between Mr. Maida and John Sumser as referenced in the letter marked as Exhibit C. If it is found that John Sumser did indeed make such representations, then the board should determine whether or not he had the authority to contract away such valuable rights;

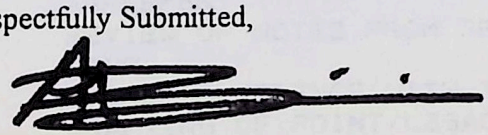
3. If the board determines that it did not authorize attorney fees for the drafting of the proposed agreements between Legacy and Point, then Point must be immediately reimbursed by the responsible party;

4. The board of directors should begin to make written minutes of all board meetings and create a policy for handling such matters in the future; and

5. Considering the changes that are occurring at Point and the new publications that are proposed, it is important that the board either take a more active role in the affairs of Point during this important period in its growth or resign.

CAUTION: Failure of the board of directors to follow the requirements of the Corporate Code, especially 5233(d)(2), could expose each and every member of the board to legal liability for the consequences of the subject transactions and put at risk the Point Foundation's status as a nonprofit entity.

Respectfully Submitted,



Albert Barsocchini
Attorney At Law
Pro Bono

FRANKFURT, GARBUS, KLEIN & SELZ

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CABLE ADDRESS
MATMITO
FACSIMILE
(212) 593-9175

August 10, 1994

Billed through 07/31/94

BILL NUMBER 05421-00000-003 MPF

POINT FOUNDATION
MR. GAETANO KAZUO MAIDA
2550 NINTH AVENUE
BERKELEY, CALIFORNIA 94710-2552

AMOUNT ENCLOSED $ _____
PLEASE DETACH THIS STUB AND RETURN WITH YOUR REMITTANCE

GENERAL REPRESENTATION

DISBURSEMENTS

IN HOUSE DUPLICATING	8.50
TELEPHONE	1.01
TOTAL DISBURSEMENTS FOR THIS MATTER	$ 9.51

LEGACY PRODUCTIONS

FOR PROFESSIONAL SERVICES RENDERED

CONFERENCE WITH GAETANO MAIDA; JBS, MPF
REVIEW OF ISSUES RE: CONFLICT WITH POINT FOUNDATION
REVIEW OF PROPOSAL WITH RAPKE
REVIEW OF LETTER FROM GAETANO AND UNDERLYING DOCUMENTS; MET WITH MPF TO DISCUSS OPEN ISSUES
T/C TANO RE: CONFLICT AND NOT-FOR-PROFIT ISSUES
PHONE CONFERENCE WITH TANO MAIDA AND REVIEW OF UNDERLYING AGREEMENTS
PHONE CONFERENCE WITH TANO MAIDA RE: FILM AGREEMENT
REVIEW OF NOTES FROM PREVIOUS CONVERSATION WITH TANO
PHONE CONFERENCE WITH TANO MAIDA
DRAFTING OF POINT/LEGACY AGREEMENT
DRAFTING OF REVISED FILM RIGHTS AGREEMENT; T/C TANO WITH ADDITIONAL QUESTIONS
DRAFTING OF REVISED FILM RIGHTS AGREEMENT
REVIEW OF LEGAL ISSUES RE: HOME SHOPPING, REVERSION AND OTHER ISSUES IN AGREEMENT

F.

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POINT FOUNDATION
BILL NUMBER 05421-00000-003 MPF

PHONE CONFERENCE WITH TANO RE: HOME SHOPPING, MERCHANDISING
REVIEW OF PRODUCTION AND AGENCY AGREEMENTS;
CONFERENCE WITH WOLFE
REVIEW OF ISSUES RE: AGENCY AGREEMENT AND
DRAFTED AGENCY AGREEMENT AND REVISED MOTION
PICTURE AGREEMENT
DRAFTING OF REVISED AGREEMENTS AND LETTER TO TAN

TOTAL FEES FOR THIS MATTER $ 3,943.50

DISBURSEMENTS

IN HOUSE DUPLICATING	
TELEPHONE	45.60
CAR SERVICE	8.75
WORD PROCESSING	15.00
	264.00
TOTAL DISBURSEMENTS FOR THIS MATTER	$ 333.35

TRADEMARKS

FOR PROFESSIONAL SERVICES RENDERED

CONFERENCE WITH MPF; TEL CONF. G. MAIDA; ON-LINE RESEARCH AND FAX TO MAIDA; TEL CONF. THOMSON AND THOMSON
CONFERENCE WITH N. ROSENTHAL
PHONE CONFERENCE WITH G. MAIDA AND REVIEW SEARCH REPORT

FRANKFURT, GARBUS, KLEIN & SELZ

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AMOUNT ENCLOSED $ _____
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POINT FOUNDATION
BILL NUMBER 05421-00000-003 MPF

MEMO HM RE TRADEMARK APPLICATIONS FOR WHOLE EARTH
PHONE CONFERENCE WITH A.MAIDA
PREPARATION OF TRADEMARK APPLICATIONS - WHOLE EARTH CATALOG
PREPARATION OF TM APPLICATIONS RE: WHOLE EARTH CATALOG
PREPARATION OF WHOLE EARTH CATALOG TM APPLICATIO

TOTAL FEES FOR THIS MATTER	$ 1,037.50

DISBURSEMENTS

THOMPSON & THOMPSON	437.37
TOTAL DISBURSEMENTS FOR THIS MATTER	$ 437.37

BILLING SUMMARY

TOTAL FEES	$ 4,981.00
TOTAL DISBURSEMENTS	$ 780.63
TOTAL CHARGES FOR THIS BILL	$ 5,761.63
LESS PREPAID AMOUNT	$ 5,000.00 CR
TOTAL BALANCE NOW DUE	$ 761.63

8-30-94
CK.# 12861

DECLARATION OF JERRY GEORGE

I, **Jerry George**, Declare:

That on or about December, 1993, I became a director of the Point Foundation.

That on or about November, 1993, Mr. Maida became a director for Point Foundation.

That Mr. Maida represented to the Point board that Frankfurt, Garbus, Klein & Selz was retained primarily to handle trademark matters.

The board was unaware of any oral agreement between John Sumser and Mr. Maida in regard to an exclusive agency agreement.

That all of the contract negotiations between Point and Legacy were handled by Mr. Maida and that the board was unaware of the content of the contract negotiations until formally presented with the contracts on or about October 14, 1994.

That the board has not fulfilled the requirements of Corp. C. 5233(D)(2) in regard to the agreements between Point and Legacy.

I swear under penalty of perjury under the laws of the State of California that to my personal knowledge the foregoing declaration is true and correct and if called as a witness, I could and would testify competently to the above stated facts.

Executed this _____October, 1994 in Marin County, State Of California

Jerry George
Director of Point of Foundation

Exhibit L